

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

**BOARDS OF TRUSTEES OF THE OHIO
LABORERS BENEFITS,**

Plaintiff,

v.

**Civil Action 2:22-cv-2681
Judge Sarah D. Morrison
Magistrate Judge Chelsey M. Vascura**

TJRS, LLC, *et al.*,

Defendants.

REPORT AND RECOMMENDATION

On October 20, 2023, the Court granted Plaintiff's motion seeking an order requiring Defendants to show cause why they should not be held in contempt for failure to comply with this Court's February August 4, 2022 Order granting Plaintiff's Motion to Accelerate Discovery and ordering Defendants to respond to requests for production of documents and appear for depositions. (ECF No. 8). The Court therefore ordered Defendants to appear before the undersigned and show cause why they should not be held in contempt at a hearing on January 10, 2024, at 1:00pm. (*Id.*) The Court further advised Defendant TJRS, LLC, that as a limited liability company, it could only proceed through licenced counsel. Plaintiff's counsel appeared at the January 10, 2024 show cause hearing, but neither Defendant appeared.

Federal Rule of Civil Procedure 37(b)(2) sets forth a laundry list of sanctions for failure to comply with a discovery order, including "treating as contempt of court the failure to obey any order except an order to submit to a physical or mental examination." Fed. R. Civ. P. 37(b)(2)(A)(vii).

Based upon Plaintiff's Motion for an Order for Defendants TJRS, LLC and Delance Sims to Appear and Show Cause Why They Should Not be Held in Contempt (ECF No. 33), the undersigned finds that Defendants have violated the Court's August 4, 2022 Order (ECF No. 8) by failing to appear for depositions and to respond to Plaintiff's written discovery. It is therefore **RECOMMENDED** that Defendants be held in contempt and that a fine of **\$100.00 PER DAY** be imposed on each Defendant until each complies with the Court's Order to produce responses to Plaintiff's written discovery and appear for deposition. It is further **RECOMMENDED** that Defendants be ordered to pay the attorney's fees and costs Plaintiff reasonably incurred in connection with its motion for a show cause hearing. Finally, it is **RECOMMENDED** that these sanctions *not* be imposed should Defendants comply with the Court's August 4, 2022 Order (ECF No. 8) within fourteen days of being personally served with this Report and Recommendation.

The United States Marshal is **DIRECTED** to serve this Report and Recommendation on Defendants by personal service. The Clerk is **DIRECTED** to send a copy of this Order via regular and certified mail to Defendants TJRS, LLC, and Delance Sims at 9102 Rolling Hill Rd, Holland, OH 43528-9205.

PROCEDURE ON OBJECTIONS

If any party objects to this Report and Recommendation, that party may, within fourteen (14) days of the date of this Report, file and serve on all parties written objections to those specific proposed findings or recommendations to which objection is made, together with supporting authority for the objection(s). A District Judge of this Court shall make a *de novo* determination of those portions of the Report or specified proposed findings or recommendations to which objection is made. Upon proper objections, a District Judge of this Court may accept,

reject, or modify, in whole or in part, the findings or recommendations made herein, may receive further evidence or may recommit this matter to the Magistrate Judge with instructions. 28

U.S.C. § 636(b)(1).

The parties are specifically advised that failure to object to the Report and Recommendation will result in a waiver of the right to have the District Judge review the Report and Recommendation *de novo*, and also operates as a waiver of the right to appeal the decision of the District Court adopting the Report and Recommendation. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

/s/ Chelsey M. Vascura

CHELSEY M. VASCURA

UNITED STATES MAGISTRATE JUDGE